

IN THE SUPREME COURT OF MISSOURI

NO. SC88647

CITY OF ARNOLD,
Plaintiff-Appellant,

v.

HOMER TOURKAKIS, ET AL.,
Respondents,

and

AMERENUE, ET AL.
Defendants.

APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY

The Honorable M. Edward Williams

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	iv
INTRODUCTION AND SUMMARY.....	1
JURISDICTIONAL STATEMENT	2
STATEMENT OF FACTS.....	3
1. The Parties and the Property.	3
2. The Redevelopment Project.	3
3. The Condemnation Action.	5
4. The Trial Court’s Order.....	7
POINTS RELIED ON	8
I. The Trial Court Erred In Dismissing The City’s Condemnation On The Grounds That The City Lacked Authority To Condemn Defendants’ Property, Because The Condemnation Is Expressly Authorized By Law, In That The TIF Act Authorizes The City To Condemn Property For The Redevelopment Of Blighted Areas And Article VI, Section 21 Of The Missouri Constitution Confirms, Rather Than Limits, The General Assembly’s Inherent Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.....	8
II. The Trial Court Erred In Holding The TIF Act Unconstitutional To The Extent It Authorizes Eminent Domain By Non-Charter	

Municipal Entities, Because The TIF Act Does Not Violate Article VI, Section 21 Of The Missouri Constitution, In That The General Assembly Has Inherent Power To Authorize The Use Of Eminent Domain And Article VI, Section 21 Confirms, Rather Than Limits, The General Assembly’s Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.....	8
STANDARD OF REVIEW.....	9
ARGUMENT.....	10
I. The Trial Court Erred In Dismissing The City’s Condemnation On The Grounds That The City Lacked Authority To Condemn Defendants’ Property, Because The Condemnation Is Expressly Authorized By Law, In That The TIF Act Authorizes The City To Condemn Property For The Redevelopment Of Blighted Areas And Article VI, Section 21 Of The Missouri Constitution Confirms, Rather Than Limits, The General Assembly’s Inherent Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.....	10
A. The General Assembly Has Inherent Authority To Authorize The Power of Eminent Domain.....	13

B.	Article VI, Section 21 Does Not Limit The General Assembly’s Power To Authorize The Use Of Eminent Domain For Redevelopment Purposes.....	16
C.	Article VI, Section 21 Declares The Public Purpose Served By The Redevelopment Of Blighted Areas.	21
D.	The Trial Court’s Interpretation Of Article VI, Section 21 Defeats The Plain Intent Of That Provision.....	23
II.	The Trial Court Erred In Holding The TIF Act Unconstitutional To The Extent It Authorizes Eminent Domain By Non-Charter Municipal Entities, Because The TIF Act Does Not Violate Article VI, Section 21 Of The Missouri Constitution, In That The General Assembly Has Inherent Power To Authorize The Use Of Eminent Domain And Article VI, Section 21 Confirms, Rather Than Limits, The General Assembly’s Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.....	26
CONCLUSION		27
APPENDIX		A1-A26

TABLE OF AUTHORITIES

	PAGE(s)
CASES	
<i>Annbar Associates v. West Side Redevelopment Corp.,</i> 397 S.W. 2d 635.....	8, 9, 11, 12, 22, 24
<i>Bauldin v. Barton County Mutual Ins. Co.,</i> 666 S.W.2d 948 (Mo. App. 1984)	6
<i>Berman v. Parker,</i> 348 U.S. 26 (1954).....	24
<i>Board of Regents v. Palmer,</i> 204 S.W.2d 291 (Mo. 1947)	14, 15, 16
<i>Buechner v. Bond,</i> 650 S.W.2d 611 (Mo. banc 1983).....	19, 24
<i>Callier v. Director of Revenue, State of Missouri,</i> 780 S.W.2d 639 (Mo. banc 1989).....	6
<i>Centene Plaza Redevelopment Corp. v. Mint Properties,</i> 225 S.W.3d 431 (Mo. 2007)	4, 20
<i>City of Maryville v. Cushman,</i> 249 S.W.2d 347 (Mo. banc 1952).....	13
<i>Consolidated School District No. 1 of Jackson County v. Jackson County,</i> 936 S.W.2d 102 (Mo. banc 1996).....	10

<i>Independence-National Educational Ass’n v. Independence School District,</i>	
223 S.W.3d 131 (Mo. banc 2007).....	18
<i>Jackson County v. State,</i>	
207 S.W.3d 608 (Mo. banc 2006).....	9
<i>Jefferson County Fire Protection Districts Ass’n v. Blunt,</i>	
205 S.W.3d 866 (Mo. banc 2006).....	19, 23
<i>Keeney v. Mo. Highway & Transp. Comm’n,</i>	
70 S.W.3d 597 (Mo. App. 2002)	3
<i>Land Clearance For Redevelopment Authority v. City of St. Louis,</i>	
270 S.W.2d 58 (Mo. banc 1954).....	22
<i>Missouri State Medical Ass’n v. Missouri Department of Health,</i>	
39 S. W. 3d 837 (Mo. banc 2001).....	9
<i>Saint Louis University v. the Masonic Temple Ass’n of St. Louis,</i>	
220 S.W.3d 721 (Mo. banc 2007).....	18
<i>St. Louis Housing Authority v. City of St. Louis,</i>	
239 S.W.2d 289 (Mo. banc. 1951).....	24
<i>State ex rel. Atkinson v. Planned Industrial Expansion Authority of St. Louis,</i>	
517 S.W.2d 36 (Mo. banc 1975).....	22
<i>State ex rel. Dalton v. Land Clearance For Redevelopment Authority,</i>	
270 S.W.2d 44 (Mo. 1954)	12, 21, 22
<i>State ex rel. Danforth v. State Environmental Improvement Authority,</i>	
518 S.W.2d 68 (Mo. banc 1975).....	9, 10, 13

<i>State ex rel. McKittrick v. Williams,</i>	
144 S.W.2d 98 (Mo. banc 1940).....	17
<i>State ex rel. Mitchell v. City of Sikeston,</i>	
555 S.W.2d 281 (Mo. banc 1977).....	18
<i>State ex rel. State Highway Commission v. James,</i>	
205 S.W.2d 534.....	8, 9, 14, 15, 16
<i>State Highway Commission v. Spainhower,</i>	
504 S.W.2d 121 (Mo. 1973)	19
<i>State of Missouri ex rel. United States Steel v. Koehr,</i>	
811 S.W.2d 385 (Mo. banc 1991).....	22, 23
<i>StopAquila.org v. City of Peculiar,</i>	
208 S.W.3d 895 (Mo. banc 2006).....	9
<i>Tax Increment Financing Commission of Kansas City v. J.E. Dunn Construction</i>	
<i>Co., Inc.,</i>	
781 S.W.2d 70 (Mo. banc 1989).....	9, 22
<i>Three Rivers Junior College District v. Statler,</i>	
421 S.W.2d 235 (Mo. banc 1967).....	20, 25
<i>Tierney v. Planned Industrial Expansion Authority of Kansas City,</i>	
742 S.W.2d 146 (Mo. banc 1988).....	24

STATUTES

Land Clearance for Redevelopment Authority Law, §§ 99.300 <i>et seq.</i>	10, 21
--	--------

Planned Industrial Expansion Law, §§ 100.300 <i>et. seq.</i>	21
Mo. Rev. Stat. § 99.820(3)	8, 9, 10, 26
Real Property Tax Increment Allocation Redevelopment Act, §§ 99.800 <i>et. seq.</i>	2, 21
Urban Redevelopment Corporations Law, §§ 353.010 <i>et. seq.</i>	21

OTHER AUTHORITIES

Article I, Sections 26 of the Missouri Constitution.....	21
Article I, Sections 28 of the Missouri Constitution.....	21
Article V, Section 3 of the Missouri Constitution.....	3
Article VI, Section 19(a) of the Missouri Constitution	18, 19, 25
Article VI, Section 21 of the Missouri Constitution	1, 2, 3, 5, 7, 8, 10, 11, 26
Debates of the Missouri Constitution 1945, Volume 9	16
House Bill 1944	11, 25

INTRODUCTION AND SUMMARY

This case is before this Court for one simple reason – the trial court’s belief that eminent domain should not be used for redevelopment purposes. The trial court ignored the plain language of the Missouri constitution as well as longstanding decisions from Missouri courts upholding the use of eminent domain to eliminate blight, and held that Article VI, Section 21 of the Missouri constitution does not allow the use of eminent domain by the City of Arnold or any other city or county not operating under a constitutional charter. This holding fundamentally misconstrues the genesis of the power of eminent domain.

The trial court read limitations into Article VI, Section 21 that are directly contrary to the plain language of that section. This constitutional provision does not limit the legislature’s ability to grant the power of eminent domain to various types of municipal entities. Rather, Article VI, Section 21 is simply an express affirmation of the General Assembly’s power to enact legislation that promotes the eradication of blighted areas, including laws authorizing the power of eminent domain for this purpose. The trial court’s contorted reading of Article VI, Section 21 contravenes a substantial body of law from this Court and guts the critical public policy objectives recognized by that constitutional provision.

It is well established in Missouri that essential governmental powers, including eminent domain, exist in the sovereign without any specific grant in the constitution. The Missouri constitution does not affirmatively grant the power of eminent domain any

more than it grants the power to levy taxes or exercise police powers. The right to bestow this power is vested in the Missouri General Assembly. Subject only to clear constitutional limitation, the General Assembly has absolute power to enact legislation giving eminent domain rights to municipalities such as the City of Arnold. The General Assembly has done exactly that through Chapter 99, which gives municipalities the power of eminent domain to implement redevelopment projects in blighted areas.

This Court should reverse the judgment of the trial court.

JURISDICTIONAL STATEMENT

On June 16, 2006, plaintiff/appellant the City of Arnold (“City”), a third class city, filed a condemnation action in the Circuit Court of Jefferson County pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the “TIF Act”).¹ Seven months later, defendants/respondents Homer and Julie Tourkakis (“defendants”) filed a motion to dismiss the action on the grounds, *inter alia*, that Article VI, Section 21 of the Missouri constitution does not authorize third class cities to exercise the power of eminent domain to redevelop blighted areas.

On May 21, 2007, four months after defendants filed their motion to dismiss, the trial court issued its Order and Judgment (“Order”) declaring that the City lacked the constitutional authority to take defendants’ property and that the TIF Act was unconstitutional to the extent that it was inconsistent with Article VI, Section 21 of the

¹ All statutory citations will be to R.S. Mo. (2006) unless otherwise noted.

Missouri constitution. The trial court dismissed the condemnation petition with prejudice.

Because this action involves the validity of a state statute, as well as the interpretation of the Missouri constitution, this appeal is within the exclusive appellate jurisdiction of the Missouri Supreme Court pursuant to Article V, Section 3 of the Missouri constitution.

STATEMENT OF FACTS

The facts relevant to this appeal are set forth below. Because the City appeals the court's grant of defendants' motion to dismiss, all allegations in the petition are taken as true. *Keeney v. Mo. Highway & Transp. Comm'n*, 70 S.W.3d 597, 599 (Mo. App. 2002).

1. The Parties and the Property.

The property subject to this condemnation action ("Property") is located in the City in Jefferson County, Missouri. The Property is a residential building that was converted into a dentist's office. L.F. 39. Defendants Homer and Julie Tourkakis are the fee owners of the Property, and they operate a dental practice at this location. L.F. 39.

2. The Redevelopment Project.

On September 15, 2005, the Arnold City Council adopted Ordinances 14.376 and 14.377 designating a redevelopment area under the Missouri TIF Act, declaring the area to be blighted within the definition set forth in Section 99.805(1), and approving a redevelopment plan for the area. L.F. 12-13. The redevelopment area consists of fifty-

two acres at the southwestern corner of the Interstate 55 and Highway 141 interchange. L.F. 11-12. The Property is located in the Redevelopment Area. L.F. 15.

The TIF Act defines a blighted area as one which, by reason of certain enumerated factors and conditions, constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use. Section 99.805(1).² Prior to approving the redevelopment plan, the City undertook an extensive study of the issues and engaged in a lengthy public process. L.F. 13-14. The process included several public hearings and meetings at which all interested individuals were invited to express their views. L.F. 13-14. Following that process, and in accordance with the procedures set forth in the TIF Act, the City Council made a legislative determination that the redevelopment area was blighted and that redevelopment of the area in accordance with the proposed plan furthered the best interests of the City. L.F. 13-14.

² In contrast to a finding of blight under Chapter 353, recently addressed by this Court in *Centene Plaza Redevelopment Corp. v. Mint Properties*, 225 S.W.3d 431 (Mo. 2007), the TIF Act does not require a finding that the redevelopment area be both an economic and a social liability. And, unlike that case, the issue here is not the propriety of the City's blight declaration, only whether the City's condemnation of that blighted property is unconstitutional.

3. The Condemnation Action.

Subsequent to the passage of the redevelopment ordinances, the City began acquiring properties in the redevelopment area. Despite good faith negotiations, the City was unable to acquire the defendants' property. L.F. 15. On June 16, 2006, the City filed this action to acquire the Property in order to accomplish the objectives of its redevelopment plan. L.F. 1, 9-19. The petition recited that the City was exercising its power of eminent domain under Section 99.820 of the TIF Act, as well as Chapters 77 and 88 of the Missouri Revised Statutes.³ The petition also alleged that the City was exercising its power of eminent domain for the public purpose of eliminating blighted conditions in the redevelopment area. L.F. 11.

After multiple continuances of the condemnation hearing and the passage of seven months from the filing of the condemnation action, defendants filed a motion to dismiss asserting for the first time that third class cities do not have the power to condemn blighted property. L.F. 5, 29.⁴ Specifically, defendants argued that Article VI, Section 21 of the Missouri constitution permits only constitutionally-chartered cities and counties

³ These statutes provide a framework for third class cities to acquire property by eminent domain for public purposes.

⁴ Defendants filed their motion to dismiss on January 22, 2007.

to condemn property to eliminate blight and effectuate redevelopment plans. L.F. 5, 30.⁵

The language of Article VI, Section 21 provides:

“Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas . . . and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest.”

After initial arguments on the motion, the trial court withheld a ruling and proceeded with the evidentiary hearing on the City’s right to condemn. L.F. 5. After a two-day hearing, the parties briefed the legal issues and the court heard oral argument on February 23, 2007. L.F. 4.

⁵ The constitutional issue raised in defendants’ motion was not raised in the answer they filed on September 28, 2006. L.F. 20-26, 30. A constitutional question must be presented at the earliest possible opportunity, otherwise it is waived. *Callier v. Director of Revenue, State of Missouri*, 780 S.W.2d 639 (Mo. banc 1989). *See also Bauldin v. Barton County Mutual Ins. Co.*, 666 S.W.2d 948 (Mo. App. 1984).

4. The Trial Court's Order.

Months passed without a ruling. Finally, on May 21, 2007, almost a year after the action was filed, the trial court dismissed the condemnation petition with prejudice, holding that the City was without power to condemn blighted property. The trial court prefaced its holding with the assertion that the use of eminent domain for redevelopment purposes does not serve a proper public purpose:

“[G]overnment has the inherent power to take private property by eminent domain for **true** public uses. These uses would include the construction of roads, sewer systems, water lines and many others, but most emphatically would not include the construction of a shopping center by a private developer as is the case here.”

L.F. 40 (emphasis in original). The trial court then summarily concluded that the entire purpose of the TIF Act was improper, saying that “[it] does not believe that the Missouri constitution allows a taking for that purpose by the City of Arnold.” L.F. 40.

The court based its holding on Article VI, Section 21 of the Missouri constitution, stating that this section only authorizes charter counties and cities to exercise the power of eminent domain for these purposes: “It is the judgment of the court that the City of Arnold lacks constitutional authority to take the property of defendants under Chapter 99.” L.F. 41. The trial court therefore dismissed the condemnation petition with prejudice and held that, “to the extent Chapter 99 is inconsistent with Article VI, Section 21 of the Constitution of 1945, it is declared unconstitutional.” L.F. 41.

This appeal followed.

POINTS RELIED ON

- I. The Trial Court Erred In Dismissing The City's Condemnation On The Grounds That The City Lacked Authority To Condemn Defendants' Property, Because The Condemnation Is Expressly Authorized By Law, In That The TIF Act Authorizes The City To Condemn Property For The Redevelopment Of Blighted Areas And Article VI, Section 21 Of The Missouri Constitution Confirms, Rather Than Limits, The General Assembly's Inherent Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.**

Article VI, Section 21

Section 99.820(3) R.S.Mo.

Annbar Associates v. West Side Redevelopment Corp., 397 S.W. 2d 635

(Mo. banc 1966)

State ex rel. State Highway Commission v. James, 205 S.W.2d 534

(Mo. banc 1947)

- II. The Trial Court Erred In Holding The TIF Act Unconstitutional To The Extent It Authorizes Eminent Domain By Non-Charter Municipal Entities, Because The TIF Act Does Not Violate Article VI, Section 21 Of The Missouri Constitution, In That The General Assembly Has Inherent Power To Authorize The Use Of Eminent Domain And**

Article VI, Section 21 Confirms, Rather Than Limits, The General Assembly's Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.

Article VI, Section 21

Section 99.820(3) R.S.Mo.

Annbar Associates v. West Side Redevelopment Corp., 397 S.W. 2d 635

(Mo. banc 1966)

State ex rel. State Highway Commission v. James, 205 S.W.2d 534

(Mo. banc 1947)

STANDARD OF REVIEW

This Court reviews the trial court's interpretation of the Missouri constitution *de novo*. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006). Likewise, the trial court's ruling on the constitutionality of a statute is reviewed *de novo*. *Jackson County v. State*, 207 S.W.3d 608, 611 (Mo. banc 2006). The party challenging a legislative enactment bears the burden of proving that it runs afoul of a constitutional provision. *State ex rel. Danforth v. State Environmental Improvement Authority*, 518 S.W.2d 68, 72 (Mo. banc 1975).

"Laws enacted by the legislature and approved by the governor have a strong presumption of constitutionality." *Missouri State Medical Ass'n v. Missouri Department of Health*, 39 S. W. 3d 837, 840 (Mo. banc 2001); *Tax Increment Financing Commission of Kansas City v. J.E. Dunn Construction Co., Inc.*, 781 S.W.2d 70, 74 (Mo. banc 1989).

Accordingly, courts “will not invalidate a statute unless it clearly and undoubtedly contravenes the constitution.” *Consolidated School District No. 1 of Jackson County v. Jackson County*, 936 S.W.2d 102, 103 (Mo. banc 1996)(internal citations omitted). “Legislative enactments should be recognized and enforced by the courts as embodying the will of the people unless they are plainly and palpably a violation of the fundamental law of the constitution.” *State ex rel. Danforth*, 518 S.W.2d at 72.

ARGUMENT

I. The Trial Court Erred In Dismissing The City’s Condemnation On The Grounds That The City Lacked Authority To Condemn Defendants’ Property, Because The Condemnation Is Expressly Authorized By Law, In That The TIF Act Authorizes The City To Condemn Property For The Redevelopment Of Blighted Areas And Article VI, Section 21 Of The Missouri Constitution Confirms, Rather Than Limits, The General Assembly’s Inherent Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.

The TIF Act authorizes municipalities, defined as “a city, village, or incorporated town or any county of this state,” to adopt redevelopment plans and projects for areas declared blighted in accordance with that Act. §§ 99.805(1)(4)(8) & (9). The Act also provides that a municipality may acquire property within a redevelopment area by eminent domain. § 99.820(3).

The City's condemnation is authorized under the TIF Act. Contrary to the trial court's holding, the eminent domain rights in the TIF Act do not, by any stretch of the imagination, "plainly and palpably" violate Article VI, Section 21 of the Missouri constitution because Section 21 does not limit the General Assembly's inherent power to grant these rights. The plain language of Article VI, Section 21 mandates reversal.

This Court recognized more than forty years ago that Article VI, Section 21 does not limit the legislature's inherent authority to grant the power of eminent domain to various types of entities to the extent deemed necessary or desirable to carry out redevelopment. To the contrary, Article VI, Section 21 merely confirms the General Assembly's power to enact laws, such as the TIF Act, for the eradication of blight.

In *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W. 2d 635, 647 (Mo. banc 1965), the plaintiff landowners challenged the constitutionality of the provisions of the Urban Redevelopment Corporations Law that authorize the condemnation of property by private redevelopment corporations.⁶ The plaintiffs argued that the statute authorized takings for private use in violation of the Missouri constitution.

This Court disagreed, pointing to Article VI, Section 21 and the legislature's broad powers to authorize the use of eminent domain for the clearance of blighted areas. *Id.* at

⁶ In 2006, the Missouri General Assembly amended Chapter 353 to eliminate condemnations by private redevelopment corporations unless undertaken pursuant to development agreements executed prior to December 31, 2006. § 353.130 (as amended by H.B. 1944).

646 (quoting *State ex rel. Dalton v. Land Clearance For Redevelopment Authority*, 270 S.W.2d 44, 52 (Mo. banc 1954)). This Court then held that Article VI, Section 21 does not limit the type of entities that may exercise the power of eminent domain for this purpose:

“Article VI, Section 21, empowering legislative bodies to enact laws and ordinances to provide for the acquisition of private property by eminent domain for the purposes therein stated, does not designate the entities and, of course, makes no distinction between entities, such legislative bodies may invest with that power. . . . We cannot, and should not, second guess the legislative branch of government as to what bodies may be invested with the power of eminent domain. . . . [T]he authority to designate those entities with whom it may invest that power is solely that of the legislative branch.”

Annbar, 397 S.W.2d at 647. Finding that the public purpose of eliminating blight may be as well served through an agency of private enterprise as through a department of government, the Court held that the Act did not violate the Missouri constitution. *Id.* at 647-48.

Annbar is controlling here. If the legislature can delegate the power of eminent domain to private entities to carry out redevelopment, it is axiomatic that the legislature can delegate that power to other non-charter entities, such as third class cities, to carry out similar projects.

**A. The General Assembly Has Inherent Authority To Authorize
The Power of Eminent Domain.**

The trial court's holding stems from a basic misconception of the General Assembly's inherent power to authorize the use of eminent domain. The trial court's conclusion that the City "lacks constitutional authority" to condemn blighted property is fundamentally flawed. The power to circumscribe the use of eminent domain rests in the General Assembly, not the constitution. Unless restricted by clear constitutional limitations, that power is unfettered.

This Court has long recognized that the Missouri constitution, unlike the federal constitution, is not a grant of power to the legislative branch. *State ex. rel. Danforth*, 518 S.W.2d at 72. Rather, the state constitution serves only as a limitation on legislative power. *Id.* Except as *plainly* restricted therein, the power of the state "is unlimited and practically absolute." *Id.*; *See also, City of Maryville v. Cushman*, 249 S.W.2d 347, 350 (Mo. banc 1952)(holding that a third class city could issue revenue bonds for a purpose not specifically authorized by the constitution).

This Court is particularly observant of this rule in the context of eminent domain. The power to condemn property, like the power to impose taxes or regulate safety hazards, is an inherent attribute of sovereignty:

"The power of eminent domain does not depend for its existence on a specific grant in the Constitution. It is inherent in sovereignty and exists in a sovereign state without any recognition thereof in the

Constitution. . . . The right to exercise the power, or to authorize its exercise, is wholly a legislative function.”

Board of Regents v. Palmer, 204 S.W.2d 291, 294 (Mo. 1947). Thus, subject only to limitations in the state constitution, the power of eminent domain may be exercised “by such agencies, for such public purposes, and in such manner as now or hereafter provided by law.” *State ex rel. State Highway Commission v. James*, 205 S.W.2d 534, 535 (Mo. banc 1947).

In *James*, this Court drew the critical distinction between a constitutional limitation upon the power of eminent domain and a constitutional declaration of public use that justifies the exercise of that power. The landowners challenged the State Highway Commission’s power to condemn their rights of access to a highway. The plaintiffs asserted that Article IV, Section 29 of the state constitution did not “authorize” this taking. The trial court agreed. *Id.* at 535. This Court reversed, holding that the power of eminent domain is vested in the State without the necessity of any grant from the Missouri constitution. *Id.*

Examining the relationship between the constitution and the power of eminent domain, the Court explained that some provisions of the constitution limit the power and the manner of its exercise in certain respects, citing Article I, Sections 26 and 28 and Article XI, Section 4. *Id.* The former sections provide that the power of eminent domain can only be exercised for public purposes and upon the payment of just compensation, and the latter section guarantees the right to a jury trial in claims for compensation. This Court then distinguished other provisions that do not so limit the legislative power:

“[Other provisions of the constitution] define[] certain purposes as being public purposes for which private property may be condemned. Game Conservation, secs. 40, 41, art. IV; Corporate Franchises, sec. 4, art. XI. . . . **Slum Clearance, sec. 21, art. VI.**”

Id. at 535 (emphasis added). The Court determined that Article IV, Section 29, authorizing the Highway Commission to limit access to state highways when in the public interest, was not a limitation on the eminent domain power, but a declaration of public purpose. *Id.* at 536.

The same year *James* was decided, this Court reached a similar conclusion in *Board of Regents v. Palmer*, 204 S.W.2d 291 (Mo. 1947). In that case, a group of landowners challenged a condemnation action by the Board of Regents for the Northeast Missouri State Teachers College at Kirksville to acquire land to build a new dormitory. Although the General Assembly had by statute given certain state educational institutions the right to condemn property, the landowners argued that this power was expressly limited by Article I, Section 27. The latter provision provided that states, counties or cities may acquire property by eminent domain in excess of that to be occupied by a public improvement. Because the College was not “the state, a county or city,” the landowners argued (as here) that the constitution was a limitation on those who could exercise the power and that the College’s attempted taking was unconstitutional. *Id.* at 292-93.

This Court rejected the landowners’ claim, holding that Article I, Section 27 was “not in any manner a limitation upon **who** may exercise the right of eminent domain” *Id.*

at 293-94 (emphasis added). Thus, this express declaration that a particular type of condemnation served a public purpose did not limit the legislature’s ability to grant the sovereign power of eminent domain to other entities, such as educational institutions. *Id.*

The rule set forth in these cases applies here. Article VI, Section 21 does not prohibit non-charter entities from exercising the power of eminent domain for the clearance of blighted areas. Rather, as this Court first recognized in *James*, and has since confirmed in a multitude of cases, Article VI, Section 21 simply declares the public purpose served by the clearance of blighted areas.

B. Article VI, Section 21 Does Not Limit The General Assembly’s Power To Authorize The Use Of Eminent Domain For Redevelopment Purposes.

The drafters of the State’s 1945 constitution certainly understood that the power of eminent domain emanates from the legislature, and they acknowledged that fact when they adopted Article VI, Section 21.⁷ The trial court’s holding is based upon a fundamental misunderstanding, or intentional avoidance, of the plain language of that constitutional provision.

Article VI, Section 21 states, in part:

⁷ This intent is borne out by the original draft of Article VI, Section 21, which stated that: “The General Assembly shall have power to provide by law . . .” It was later shortened to “Laws may be enacted.” *See* Debates of the Missouri Constitution 1945, Volume 9, at 2702-03.

“Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and . . . for taking or permitting the taking, by eminent domain, of property for such purposes, . . .” (emphasis added)

The unambiguous language of Section 21 contemplates two scenarios for local government bodies to implement plans for the clearance and redevelopment of blighted areas. The first scenario—“Laws may be enacted”—plainly recognizes that the General Assembly may enact laws, and authorize the use of eminent domain, for the eradication of blighted conditions.⁸ This language does not limit the type of municipal entities that can exercise the power of eminent domain under the contemplated legislation. The second scenario acknowledges that charter cities may adopt such legislation without

⁸ In *State ex rel. McKittrick v. Williams*, 144 S.W.2d 98, 101-103 (Mo. banc 1940), this Court confirmed that the phrase “laws may be enacted” in the Missouri constitution is a reference to the power vested in the Missouri legislature to enact laws.

statutory authority.⁹ Therefore, even without an enactment by the General Assembly, constitutional charter cities and counties could adopt legislation allowing for the clearance for blighted areas. The conjunction “and” between these two clauses means that both scenarios are possible.

The trial court focused solely on the latter provision of the section, holding that it limits the type of entities – only charter cities and counties – that can exercise condemnation for redevelopment purposes. This holding contravenes the clear language and expressed intent of Article VI, Section 21.

When the language of a constitutional provision is clear, the courts may not rewrite the language under the guise of judicial construction. *Saint Louis University v. the Masonic Temple Ass’n of St. Louis*, 220 S.W.3d 721, 726 (Mo. banc 2007); *Independence-National Educational Ass’n v. Independence School District*, 223 S.W.3d 131, 137 (Mo. banc 2007). The courts cannot read into the constitution words that are not there. *Independence-National*, 223 S.W.3d at 137. In fact, constitutional construction is not required if the words at issue are plain and unambiguous. *Saint Louis*

⁹ Missouri recognizes two types of cities—charter cities and non-charter cities. A charter city derives its powers from a voter-approved charter, a home rule charter or constitutional charter, pursuant to Article VI, Section 19(a) of the Missouri constitution. A non-charter city, or statutory city, like the City of Arnold, derives its powers from laws passed by the General Assembly. *See State ex rel. Mitchell v. City of Sikeston*, 555 S.W.2d 281 (Mo. banc 1977).

University, 220 S.W.3d at 726. The courts will not ascribe to the state constitution a meaning that is contrary to that clearly intended by the drafters; rather, the courts must undertake to carry out the meaning the people understood the words to have when the provision was adopted. *Jefferson County Fire Protection Districts Ass’n v. Blunt*, 205 S.W.3d 866, 872 (Mo. banc 2006).

Here, the language of Article VI, Section 21 is clear, and the trial court should simply have given effect to its plain language. Moreover, to the extent construction is required, the trial court’s construction was erroneous. Constitutional provisions are afforded broader and more liberal construction than statutes due to the constitution’s permanent nature. *Buechner v. Bond*, 650 S.W.2d 611, 612 (Mo. banc 1983); *State Highway Commission v. Spainhower*, 504 S.W.2d 121, 125 (Mo. 1973). The primary objective is to give effect to the intent and purpose of the provision. *Buechner*, 650 S.W.2d at 613. Courts will not interpret a constitutional provision in a manner that renders language “meaningless surplusage.” *Id.*

If Section 21 was intended to limit the use of eminent domain to charter cities acting under their own authority, as the trial court found, the initial clause stating that “*Laws may be enacted, and*” would be rendered meaningless. As the additional language in Section 21 recognizes, charter cities and counties have inherent authority to enact ordinances and condemn property without the necessity for statutory authorization. Mo. Const. Art. VI, § 19(a). Thus, the first clause of this section is an acknowledgment of a second option – the legislature may pass laws authorizing other, non-charter public bodies, to condemn property for redevelopment purposes. The obvious meaning of the

word “and” in this sentence cannot be ignored. *See Centene Plaza Redevelopment Corp.*, 225 S.W.3d at 433 (since Section 353.020 requires that a redevelopment area constitute an “economic *and* social” liability, findings of both economic and social liability were necessary).

Here, the Missouri legislature clearly has not interpreted Article VI, Section 21 to impose any limitations upon its ability to grant eminent domain powers to non-charter entities. To the contrary, it has enacted several statutes, including the TIF Act, that grant such powers. To the extent that this Court deems Article VI, Section 21 ambiguous, the legislative body’s interpretation of that constitutional provision is entitled to great weight and “should not be departed from unless manifestly erroneous.” *Three Rivers Junior College District v. Statler*, 421 S.W.2d 235, 243 (Mo. banc 1967)(holding that a constitutional provision imposing an annual tax rate ceiling on school districts formed of cities and towns did not prohibit the legislature from authorizing a junior college district overlying one or more local school districts to levy a separate tax). *See also In re V*, 306 S.W.2d 461, 465 (Mo. banc 1957).

Article VI, Section 21 does not plainly limit the entities that may exercise the power of eminent domain for redevelopment purposes, and the trial court erred in reading any such limitation into this provision. In fact, the language of Article VI, Section 21 proves that it was not enacted to address *who* may exercise eminent domain, but rather to establish an essential purpose for which eminent domain may be exercised.

**C. Article VI, Section 21 Declares The Public Purpose Served By
The Redevelopment Of Blighted Areas.**

Consistent with Article VI, Section 21, the Missouri General Assembly has enacted various comprehensive statutes that grant municipal entities tools to implement plans for the redevelopment of blighted and insanitary areas. *See, e.g.*, The Planned Industrial Expansion Law, §§ 100.300 *et. seq.*, The Land Clearance for Redevelopment Authority Law, §§ 99.300 *et seq.*, The Urban Redevelopment Corporations Law, §§ 353.010 *et. seq.*, and The Real Property Tax Increment Allocation Redevelopment Act, §§ 99.800 *et. seq.* All of these acts contain provisions authorizing non-charter municipal bodies to condemn private property for the clearance and redevelopment of blighted areas. Sections 99.460; 100.420; 353.130; 353.170; and 99.820(3). Under the trial court's order, all of these statutes would be unconstitutional.

This Court has consistently rejected constitutional challenges to Missouri's redevelopment acts, and the use of eminent domain thereunder, on the grounds that Article VI, Section 21 affirms the public use served by the clearance of blighted properties. In *State ex rel. Dalton v. Land Clearance for Redevelopment Authority*, 270 S.W.2d 44 (Mo. banc 1954), this Court upheld the constitutionality of the Land Clearance for Redevelopment Law. That statute authorizes land clearance authorities, *i.e.*, non-charter public bodies, to condemn property for land clearance projects. § 99.420(4). The landowners asserted that the law authorized the taking of property for private use, in violation of Article I, Sections 26 and 28 of the Missouri constitution. *Id.* at 49.

This Court rejected that contention, holding that those provisions must be read in conjunction with Article VI, Section 21, which “in express terms, unqualifiedly authorizes the *legislature* and cities and counties operating under constitutional charters to enact legislation providing for the taking of blighted and insanitary areas by eminent domain.” *Id.* at 50 – 51 (emphasis added). *See also, State of Missouri ex rel. United States Steel v. Koehr*, 811 S.W.2d 385, 388 (Mo. banc 1991)(noting that Article VI, Section 21 “authorized the legislature and cities and counties to enact legislation for the taking of blighted areas.”).

Thus, Article VI, Section 21 is simply a declaration that the redevelopment of blighted, substandard and insanitary areas, and the use of eminent domain for that purpose, serves a public purpose in Missouri. As this Court expressly recognized in *Annbar*, this constitutional provision does not limit the legislature’s inherent authority to grant this power to various types of entities to carry out redevelopment purposes. *Annbar*, 397 S.W.2d at 647. The trial court’s holding directly contravenes *Dalton*, *Annbar*, and other rulings from this Court, all upholding the use of eminent domain as authorized by the General Assembly to accomplish the goal of urban redevelopment. *See Tax Increment Financing Commission of Kansas City v. J.E. Dunn Construction Co., Inc.*, 781 S.W.2d 70, 78-79 (Mo. banc 1989)(rejecting a constitutional challenge to the use of eminent domain under the TIF Act); *State ex rel. Atkinson v. Planned Industrial Expansion Authority of St. Louis*, 517 S.W.2d 36, 44-45 (Mo. banc 1975)(rejecting a constitutional challenge to the use of eminent domain under the Planned Industrial Expansion Authority Act). *See also Land Clearance For Redevelopment Authority v.*

City of St. Louis, 270 S.W.2d 58 (Mo. banc 1954)(rejecting claim that cooperation agreement under Land Clearance For Redevelopment Law allowed taking of private property for private use).

The reason for the trial court’s divergence from these authorities is clear. The trial court expressed its “emphatic” belief that a taking for construction of a private shopping center is not a “true” public purpose. L.F. 40. This Court, however, has affirmatively decided that issue. As long as the purpose of the taking is the clearance of blighted property, any benefits to private developers do not negate that public purpose. *Koehr*, 811 S.W.2d at 390. Nor does the end use determine whether a public purpose is served. *Id.* at 389-90. “The declaration of blight declares the public use.” *Id.* at 389.

Here, the City alleged that the redevelopment area was blighted under the TIF Act. Thus, the taking serves a public use under the controlling authority of this Court. The trial court adopted a contorted reading of Article VI, Section 21 in an apparent (and erroneous) attempt to avoid the established law of this State.

D. The Trial Court’s Interpretation Of Article VI, Section 21 Defeats The Plain Intent Of That Provision.

The trial court’s ruling not only defies the plain language of Article VI, Section 21, it defeats the expressed purpose of that provision – to encourage laws and ordinances that promote the redevelopment of blighted areas. The primary goal of Missouri courts when interpreting constitutional provisions is to ascertain the intent of those who voted for the provision and give effect to that intent. *Jefferson County Fire Protection*

Districts, 205 S.W.3d at 872; *Buechner*, 650 S.W.2d at 613. The trial court, based upon its expressed hostility toward the City's use of eminent domain, did just the opposite.

When the 1945 constitution was adopted, it was "common knowledge" that blighted areas existed "and the framers of our Constitution and those who voted to adopt it took note of those conditions." *St. Louis Housing Authority v. City of St. Louis*, 239 S.W.2d 289, 294 (Mo. banc. 1951). Observing that blighted areas cause health and safety issues, depreciation of property values and a diminution of tax revenues, this Court has recognized that Article VI, Section 21 was enacted to foster "full and complete elimination of this cancerous attack upon our municipalities." *Annbar*, 397 S.W.2d at 640. *See also St. Louis Housing Authority*, 239 S.W.2d at 294.

The use of eminent domain is vital to this goal. It would be impossible to clear and redevelop blighted areas without this tool. *Annbar*, 397 S.W.2d at 639. Absent the power of eminent domain, one property owner would be able to thwart a municipality's plan for redevelopment of an entire area. *See Berman v. Parker*, 348 U.S. 26, 35 (1954). *See also Tierney v. Planned Industrial Expansion Authority of Kansas City*, 742 S.W.2d 146, 151 (Mo. banc 1988)(authorizing condemnation of non-blighted property if necessary to provide a tract of sufficient size and accessibility to carry out a plan for redevelopment of a blighted area).

The trial court enunciated no reason why these important powers should be restricted to constitutional charter cities for the excellent reason that none exists. Charter cities do not, by definition, possess any unique attributes that predispose them to blight. Under the Missouri constitution, any city with more than five thousand inhabitants or any

other incorporated city may adopt a charter for its governance. Mo. Const. Art. VI, § 19. Charter cities may be large or small, urban or rural. There is no logical reason why the framers of our constitution would have limited the General Assembly's powers in this manner, and this Court should not construe the constitution to reach such an absurd result. *See Three Rivers Junior College*, 421 S.W.2d at 242.

Thus, while there may be those, such as the trial judge, who advocate a market unfettered by any government intervention, the people of this State affirmed in 1945 that local governments should have the ability to play a role in the sound growth of their communities. The Missouri General Assembly has provided the tools for all local bodies to prevent and eliminate blighted conditions and the social and economic ills attendant to those conditions. Any restrictions on those rights must similarly come from the legislative body.¹⁰

¹⁰ Just last year, the Missouri legislature responded to concerns regarding the use of eminent domain in Missouri. During the 2006 legislative session, the Missouri General Assembly made significant changes to Chapter 523, adding new procedural safeguards and new compensation requirements for property owners in the condemnation process. The Bill also contains a legislative declaration that while eminent domain may not be used solely for economic development purposes, it may be used for the elimination of blighted, substandard or unsanitary conditions. House Bill 1944, effective August 28, 2006.

For all these reasons, the City requests this Court to reverse the trial court's order dismissing the condemnation, with prejudice.

II. The Trial Court Erred In Holding The TIF Act Unconstitutional To The Extent It Authorizes Eminent Domain By Non-Charter Municipal Entities, Because The TIF Act Does Not Violate Article VI, Section 21 Of The Missouri Constitution, In That The General Assembly Has Inherent Power To Authorize The Use Of Eminent Domain And Article VI, Section 21 Confirms, Rather Than Limits, The General Assembly's Power To Authorize The Use Of Eminent Domain For The Clearance Of Blighted, Substandard Or Insanitary Areas.

In dismissing the condemnation action, the trial court also held that to the extent Chapter 99 is inconsistent with Article VI, Section 21 of the Missouri constitution, it is declared unconstitutional. L.F. 47. The court indicated that the TIF Act is inconsistent with this constitutional provision in that it authorizes the use of eminent domain by non-charter municipal entities. L.F. 47. Thus, the trial court's ruling purports to invalidate portions of Section 99.820(3).

For all the reasons set forth in Point I, the trial court's ruling is erroneous. The General Assembly has the inherent power to authorize the use of eminent domain in the TIF Act to further the public purpose of clearing blighted areas. Article VI, Section 21 of the Missouri constitution imposes no limitations upon that right.

This Court should reverse the trial court's order to the extent that it invalidated any of the provisions of the TIF Act.

CONCLUSION

The Missouri legislature enacted the TIF Act pursuant to its inherent power to provide various redevelopment tools, including the power of eminent domain, to all municipal entities in Missouri. The City of Arnold declared the defendants' property blighted and initiated these proceedings under this statutory authority. Article VI, Section 21 does not limit the City's ability to condemn under this Act. Nor does it render any portion of that Act unconstitutional. Rather, it simply affirms that a taking for the purposes set forth in the TIF Act serves a valid public purpose.

For all the reasons set forth above, this Court should reverse the trial court's order dismissing this action.

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RULE 84.06(c) CERTIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 2000 and contains no more than 7,867 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 31,000 limit in the rules). The font is Times New Roman, proportional spacing, 13-point type. A CD-ROM (which has been scanned for viruses and is virus free) containing the full text of this brief has been served on each party separately represented by counsel and is filed herewith with the clerk.

I hereby certify that one true and correct copy of the foregoing and a CD-ROM containing the same was mailed, postage prepaid, this 16th day of October, 2007, addressed to the following:

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